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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 LILY CASSANDRA ALPHONSIS, } No. CV 17-03650-ODW (DFM)  
12 Plaintiff, }  
13 v. } MEMORANDUM AND ORDER  
14 CENTURY REGIONAL } DISMISSING COMPLAINT WITH  
15 DETENTION FACILITY, et al., } LEAVE TO AMEND  
16 Defendants. }  
17

18  
19 I.

20 BACKGROUND

21 On May 15, 2017, Lily Cassandra Alphonsis (“Plaintiff”), a prisoner at  
22 Century Regional Detention Facility in Lynwood, California, filed a pro se  
23 civil rights action under 42 U.S.C. § 1983. Dkt. 1 (“Complaint”). She names as  
24 defendants the Century Regional Detention Facility and Sheriff Jim  
25 McDonnell in his official capacity only.<sup>1</sup>

26  
27 <sup>1</sup> Plaintiff mentions the Los Angeles County Sheriff’s Department in the  
28 Complaint’s caption, but this appears to be part of her naming Sheriff

1 In accordance with 28 U.S.C. §§ 1915(e)(2) and 1915A, the Court must  
2 screen the Complaint to determine whether the action is frivolous or malicious;  
3 fails to state a claim on which relief might be granted; or seeks monetary relief  
4 against a defendant who is immune from such relief.

## 5 II.

### 6 SUMMARY OF ALLEGATIONS

#### 7 A. Allegations Related to Illness from Food

8 In November 2015, Plaintiff collapsed at dinner. Complaint at 5.  
9 “Defendants” had put milk in her food, even though the prison kitchen  
10 department knew milk would trigger anaphylactic shock. Id. Later, the  
11 “Defendants” gave her creamer which “tore through” her skin. Id. She  
12 reported this to the medical department. Id. In late February 2017, “the  
13 Defendant” gave Plaintiff a breakfast that made her sick. Id. She was sent to  
14 the clinic, and was either told that no doctor was available or saw a doctor  
15 who refused to treat her. Id. “The Defendant” removed Plaintiff from the  
16 Education Based Incarceration Program and took away credits she had earned  
17 toward her release date. Id. at 6.

#### 18 B. Allegations Related to Court Mail

19 On August 25, 2016, Plaintiff handed her California Supreme Court  
20 habeas petition to “Deputy Gutierrez.” Id. He sealed the envelope and  
21 indicated that he would place it in the mail. Id. Plaintiff contacted the  
22 California Supreme Court in mid-September 2016; the clerk confirmed receipt  
23 of the envelope but stated that “the documents inside the envelope seemed like  
24 a joke, as the documents were some papers that were marked Exhibit,” and  
25 that he had returned the envelope to the prison. Id. Plaintiff’s Complaint is  
26 hard to understand, but it appears that she claims that the California Supreme

27  
28 McDonnell as a defendant. See Complaint at 1, 3.

1 Court dismissed her petition because letters from that court were withheld  
2 from her. Id. at 6-7. She attaches to the Complaint a summary dismissal of her  
3 habeas petition by the California Supreme Court, dated January 18, 2017. Id.  
4 at 17. Plaintiff also claims that the “Defendants” interfered with her sending  
5 and receiving mail from a Minnesota probate court, in a case where she claims  
6 that she and the late musician Prince collaborated on a song. Id. at 7-8.

7 **C. Allegations Related to Cellmate**

8 In January 2017, “the Defendant” housed Celine Martelleur with  
9 Plaintiff. Id. at 8. On February 12, Martelleur, who had been in the news for  
10 stalking actress Jodie Foster, hit and scraped herself against the cell wall. Id.  
11 Plaintiff tried to alert deputies by pressing an alarm for help, but Martelleur  
12 attacked Plaintiff to stop her. Id. After Plaintiff pushed the alarm, Martelleur  
13 was removed from the cell. Id. That evening, Plaintiff was sent to solitary  
14 confinement and accused of attacking Martelleur. Id. at 8-9. After eleven days,  
15 a sergeant reviewed Plaintiff’s side of the story and released her from solitary.  
16 Id. at 9.

17 **D. Allegations Related to Release Date**

18 In March 2017, “one of the defendants Sergeant” looked into Plaintiff’s  
19 “minute order” and told her that her release date was incorrect. Id. Plaintiff  
20 submitted a grievance, was told by “the defendant’s deputy Afaro” that “the  
21 county percentage will kick in whenever it kicks in,” and she was referred to  
22 “Senior Vasquez.” Id. Vasquez confirmed that Plaintiff’s sentence calculation  
23 was inaccurate, but Plaintiff’s subsequent grievance was ignored. Id. On  
24 March 18, “the defendant” handed Plaintiff a warrant that prevented Plaintiff’s  
25 release from prison. Id. On March 20, Plaintiff appeared in court and learned  
26 that the warrant was related to the incident with Martelleur. Id. After a month,  
27 that case was dismissed. Id. Plaintiff again requested a correction of her release  
28 date, but her request was ignored. Id.

1 **E. Relief Requested**

2 Plaintiff requests the following relief:

- 3 • “Healthy foods” and medical care;
- 4 • The ability to send mail without interference;
- 5 • Enrollment in prison programs and recalculation of her credits toward
- 6 her release date;
- 7 • Actual custody credit, including relief from being “sentenced to a crime
- 8 [she] did not commit”; and
- 9 • Classification as a non-violent inmate.

10 Id. at 10.

11 **III.**

12 **STANDARD OF REVIEW**

13 The Court’s screening of the Complaint under the foregoing statutes is

14 governed by the following standards: A complaint may be dismissed for failure

15 to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2)

16 insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police

17 Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). In determining whether the

18 complaint states a claim on which relief may be granted, its allegations of

19 material fact must be taken as true and construed in the light most favorable to

20 Plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Since

21 Plaintiff is appearing pro se, the Court must construe the allegations of the

22 complaint liberally and afford Plaintiff the benefit of any doubt. Karim-Panahi

23 v. Los Angeles Police Dep’t, 839 F.2d 621, 623 (9th Cir. 1988). However, “the

24 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”

25 Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation

26 of a civil rights complaint may not supply essential elements of the claim that

27 were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251,

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1 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268  
2 (9th Cir. 1982)). A “plaintiff’s obligation to provide the ‘grounds’ of his  
3 ‘entitlement to relief’ requires more than labels and conclusions, and a  
4 formulaic recitation of the elements of a cause of action will not do. Factual  
5 allegations must be enough to raise a right to relief above the speculative level,  
6 on the assumption that all the allegations in the complaint are true (even if  
7 doubtful in fact).” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)  
8 (citations omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
9 (holding that to avoid dismissal for failure to state a claim, “a complaint must  
10 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that  
11 is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads  
12 factual content that allows the court to draw the reasonable inference that the  
13 defendant is liable for the misconduct alleged.” (citation omitted)).

14 If the Court finds that a complaint should be dismissed for failure to state  
15 a claim, the Court may dismiss with or without leave to amend. Lopez v.  
16 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). The Court should  
17 grant leave to amend if it appears possible that the defects in the complaint  
18 could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also  
19 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that “[a] pro  
20 se litigant must be given leave to amend his or her complaint, and some notice  
21 of its deficiencies, unless it is absolutely clear that the deficiencies of the  
22 complaint could not be cured by amendment”). However, if, after careful  
23 consideration, it is clear that a complaint cannot be cured by amendment, the  
24 Court may dismiss without leave to amend. Cato, 70 F.3d at 1105-06.

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1 IV.  
2 DISCUSSION

3 Plaintiff's Complaint suffers from numerous deficiencies, as detailed  
4 below.

5 A. Heck-Barred Claims

6 In Heck v. Humphrey, 512 U.S. 477 (1994), the United States Supreme  
7 Court addressed "whether a state prisoner may challenge the constitutionality  
8 of his conviction under 42 U.S.C. § 1983," id. at 478, and held:

9 [T]o recover damages for allegedly unconstitutional conviction or  
10 imprisonment, or for other harm caused by actions whose unlawfulness  
11 would render a conviction or sentence invalid, a § 1983 plaintiff must  
12 prove that the conviction or sentence has been reversed on direct appeal,  
13 expunged by executive order, declared invalid by a state tribunal  
14 authorized to make such determination, or called into question by a  
15 federal court's issuance of a writ of habeas corpus. . . . A claim for  
16 damages bearing that relationship to a conviction or sentence that has  
17 not been so invalidated is not cognizable under § 1983.

18 Id. at 486-87; see also Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005) (holding  
19 that Heck doctrine applies regardless of type of relief sought if success in action  
20 would necessarily demonstrate invalidity of confinement or its duration).

21 To the extent Plaintiff seeks to challenge her underlying conviction and  
22 sentence or the loss of custody credits, such claims are barred by Heck. See  
23 Edwards v. Balisok, 520 U.S. 641, 648 (1997) (holding that "claim for  
24 declaratory relief and money damages, based on allegations . . . that  
25 necessarily imply the invalidity of the punishment imposed," including  
26 deprivation of good-time credits, "is not cognizable under § 1983"); Heck, 512  
27 U.S. at 487 (holding that if "a judgment in favor of the plaintiff would  
28 necessarily imply the invalidity of his conviction or sentence . . . the complaint

1 must be dismissed unless the plaintiff can demonstrate that the conviction or  
2 sentence has already been invalidated”).

3 **B. Lack of Cognizable Legal Theories and Insufficient Facts**

4 In order to state a claim under § 1983, Plaintiff must show: (1) the  
5 defendants acted under color of law, and (2) their conduct deprived her of a  
6 constitutional right. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985)  
7 (en banc). Plaintiff refers to “human rights” (see, e.g., Complaint at 3) but fails  
8 to invoke any cognizable legal theories with respect to her rights under the  
9 Constitution. With respect to her food and medical care, and being housed  
10 with Martelleur, she may mean to allege deliberate indifference under the  
11 Eighth Amendment. If that is the case, she has not stated such a claim. See  
12 Estelle v. Gamble, 429 U.S. 97, 106 (1976) (holding that to establish Eighth  
13 Amendment claim that prison authorities provided inadequate medical care,  
14 prisoner must allege acts or omissions sufficiently harmful to evidence  
15 deliberate indifference to serious medical needs, but inadvertent failure to  
16 provide adequate medical care, mere negligence or medical malpractice, mere  
17 delay in medical care (without more), or difference of opinion over proper  
18 medical treatment are insufficient); Farmer v. Brennan, 511 U.S. 825, 834  
19 (1994) (holding that to violate Eighth Amendment, deprivation alleged must  
20 objectively be sufficiently serious and prison official must subjectively have  
21 sufficiently culpable state of mind).

22 Plaintiff mentions “discrimination” and the Americans with Disabilities  
23 Act (“ADA”) (see Complaint at 6). Title II of the ADA provides that “no  
24 qualified individual with a disability shall, by reason of such disability, be  
25 excluded from participation in or be denied the benefits of the services,  
26 programs, or activities of a public entity, or be subjected to discrimination by  
27 any such entity.” 42 U.S.C. § 12132. To state a claim under Title II of the  
28 ADA, a plaintiff must allege: (1) that he is an individual with a disability; (2)

1 that he is otherwise qualified to participate in or receive the benefit of some  
2 public entity's services, programs, or activities; (3) that he was either excluded  
3 from participation in or denied the benefits of the public entity's services,  
4 programs or activities, or was otherwise discriminated against by the public  
5 entity; and (4) that such exclusion, denial of benefits, or discrimination was by  
6 reason of the plaintiff's disability. Thompson v. Davis, 295 F.3d 890, 895 (9th  
7 Cir. 2002). Even assuming that Plaintiff's alleged allergy is a disability,  
8 Plaintiff has not alleged anything to suggest that prison officials discriminated  
9 against her because of those allergies.

10 Plaintiff does not explain what constitutional right she has to a particular  
11 inmate classification. See Hernandez v. Johnston, 833 F.2d 1316, 1318 (9th  
12 Cir. 1987) ("Magistrate Burgess correctly concluded that 'a prisoner has no  
13 constitutional right to a particular classification status.'").

14 As for the alleged interference with and review of Plaintiff's mail: The  
15 "policy of diverting publications through the property room is reasonably  
16 related to the prison's interest in inspecting mail for contraband." Crofton v.  
17 Roe, 170 F.3d 957, 961 (9th Cir. 1999). Prisoners enjoy a First Amendment  
18 right to send and receive mail. Witherow v. Paff, 52 F.3d 264, 265 (9th Cir.  
19 1995). Temporary delay or isolated incident of delay in mail processing does  
20 not violate a prisoner's First Amendment rights. Crofton, 170 F.3d at 961.  
21 Plaintiff alleges that her access to the courts has been interfered with, but her  
22 allegations are too conclusory and vague to address. Why could she not obtain  
23 copies of her California Supreme Court habeas exhibits and what efforts did  
24 she make to obtain them? What letters from the California Supreme Court  
25 were withheld from her, and by whom? Why does she believe that her habeas  
26 petition was dismissed for failure to respond to these "letters," rather than for  
27 some other reason? Did Plaintiff suffer any prejudice from the delay in  
28 receiving letters in her probate case? What legal mail was "withheld" in Case



1 No. 16-7927 (C.D. Cal.), and by whom, and what prejudice did she suffer?<sup>2</sup>

2 See Complaint at 6-7.

3 It is unclear what constitutional right Plaintiff believes was violated with  
4 respect to her eleven days in solitary confinement following the incident with  
5 Martelleur. Her allegations do not suggest that she was placed in solitary  
6 confinement for any improper reason such as retaliation, and she was released  
7 “immediately” after an investigation. See Complaint at 9.

8 Throughout her Complaint, Plaintiff makes only generalized allegations  
9 against the “Defendant” or the “Defendants.” Under § 1983, she must  
10 demonstrate that each defendant personally participated in the deprivation of  
11 her rights. See Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

12 **C. Claims against the Century Regional Detention Facility**

13 Section 1983 provides, in relevant part, that “[e]very person who, under  
14 color of any statute, ordinance, regulation, custom, or usage . . . subjects . . .  
15 any citizen of the United States . . . to the deprivation of any rights, privileges,  
16 or immunities secured by the Constitution and laws, shall be liable to the  
17 party.” 42 U.S.C. § 1983. “The term ‘persons’ encompasses state and local  
18 officials sued in their individual capacities, private individuals, and entities  
19 which act under the color of state law and local governmental entities.” Vance  
20 v. Cty. of Santa Clara, 928 F. Supp. 993, 995–96 (N.D. Cal. 1996). A local jail  
21 is not a proper defendant under § 1983. Id. at 996 (“Naming a municipal  
22 department as a defendant is not an appropriate means of pleading a § 1983  
23 action against a municipality.”). Thus, to the extent Plaintiff alleges that the  
24 “Century Regional Detention Facility” violated her constitutional rights, her  
25 Complaint fails to state a claim because this entity is not a “person” under §

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27 <sup>2</sup> This case was dismissed because Plaintiff failed to submit an IFP  
28 Request or prepay the filing fees. See Case No. 16-7927 (C.D. Cal.), Dkt. 6.

1 1983.

2 **D. Official Capacity Claims against Sheriff Jim McDonnell**

3 An “official-capacity suit is, in all respects other than name, to be treated  
4 as a suit against the entity.” Kentucky v. Graham, 473 U.S. 159, 166 (1985).  
5 Here, the entity would be Los Angeles County (the “County”). Municipalities  
6 are “persons” subject to liability under 42 U.S.C. § 1983 where official policy  
7 or custom causes a constitutional tort. See Monell v. Dep’t of Social Servs.,  
8 436 U.S. 658, 690 (1978). However, the County “may not be sued under §  
9 1983 for an injury inflicted solely by its employees or agents. Instead, it is only  
10 when execution of a government’s policy or custom, whether made by its  
11 lawmakers or by those whose edicts or acts may fairly be said to represent  
12 official policy, inflicts the injury that the government as an entity is responsible  
13 under § 1983.” Id. at 694 (1978). Thus, the County may not be held liable for  
14 the alleged actions of its employees or agents unless “the action that is alleged  
15 to be unconstitutional implements or executes a policy statement, ordinance,  
16 regulation, or decision officially adopted or promulgated by that body’s  
17 officers,” or if the alleged constitutional deprivation was “visited pursuant to a  
18 governmental ‘custom’ even though such a custom has not received formal  
19 approval through the body’s official decisionmaking channels.” Id. at 690-91.

20 Here, Plaintiff has failed to identify any policy statements or regulations  
21 of the County, or any officially adopted or promulgated decisions, the  
22 execution of which inflicted the alleged injuries. She has also not alleged  
23 sufficient facts for the Court to “draw the reasonable inference” that the  
24 County has a governmental custom of committing the illegal acts alleged. The  
25 Court therefore concludes that Plaintiff has failed to allege sufficient facts for  
26 the Court to “draw the reasonable inference” that the County has a custom of  
27 engaging in the kind of illegal conduct that Plaintiff alleges occurred here. See  
28 Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996) (“Liability for improper

1 custom may not be predicated on isolated or sporadic incidents; it must be  
2 founded upon practices of sufficient duration, frequency and consistency that  
3 the conduct has become a traditional method of carrying out policy.”).

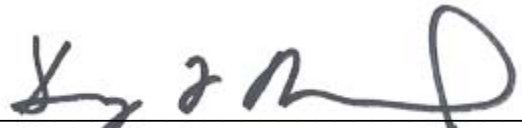
4 **V.**

5 **CONCLUSION**

6 Because of the pleading deficiencies identified above, the Complaint is  
7 subject to dismissal. Because it appears to the Court that some of the  
8 Complaint’s deficiencies are capable of being cured by amendment, it is  
9 dismissed with leave to amend. See Lopez, 203 F.3d at 1130-31 (holding that  
10 pro se litigant must be given leave to amend complaint unless it is absolutely  
11 clear that deficiencies cannot be cured by amendment). If Plaintiff still desires  
12 to pursue her claims against Defendants, she shall file a First Amended  
13 Complaint within thirty-five (35) days of the date of this Order remedying the  
14 deficiencies discussed above. Plaintiff’s First Amended Complaint should bear  
15 the docket number assigned in this case; be labeled “First Amended  
16 Complaint”; and be complete in and of itself without reference to the original  
17 Complaint or any other pleading, attachment or document. The Clerk is  
18 directed to send Plaintiff a blank Central District civil rights complaint form,  
19 which Plaintiff is strongly encouraged to utilize.

20 **Plaintiff is admonished that, if she fails to timely file a First Amended**  
21 **Complaint, the Court will recommend that this action be dismissed with**  
22 **prejudice for failure to diligently prosecute.**

23  
24 Dated: June 21, 2017

25   
26 DOUGLAS F. McCORMICK  
27 United States Magistrate Judge  
28